

Earmarking; committee combining activities as registrant and conduit. A committee's transfer of funds in response to an individual contributor's request that his contribution be used for a specific purpose is an act of earmarking, regardless of whether the request is made after the individual's contribution takes place. Such transfers may be made only if the committee functions as a conduit for the transfers, transferring the identities of the earmarking contributors to the designated recipients along with the earmarked funds. A political registrant which contributes and disburses in its own name may also act as a conduit for the contributions of others if all receipts and transfer of funds for which it acts as a conduit are specially designated as such on the registrant's reports. S. 11.16 (4), Stats. (Issued to Quinn Martin, August 18, 1977)

You have described a situation in which a corporation's political action committee (PAC) will solicit voluntary contributions from the corporation's "officers, directors, employees and possibly others." Either at the time of the contribution or "within a reasonable time" thereafter, individual contributors will be allowed to designate specific recipients for their contributions and the PAC will honor such designations so long as they are lawful. The PAC will then transfer to the recipient, with the check by which the earmarked funds are transferred, a statement identifying the individual contributor whose designation resulted in the transfer, pursuant to s. 11.06 (1), Stats.

Contributors will also have the options of not designating specific recipients for their contributions or designating that the PAC use the contributions for its own political purposes. The PAC will determine a use for such contributions.

You ask whether the above-described procedure would be permissible in light of s. 11.16 (4), Stats., which deals with "earmarking" of contributions to a non-candidate committee. That subsection reads in part:

"When a contribution is made to a political party or to an individual or committee other than a candidate or his personal campaign committee, the purpose may not be specified."

The statutes do not define the parameters of earmarking. The Board is of the opinion that earmarking encompasses the situation in which a committee honors a contributor's request that the committee use his or her contribution for a specified purpose. This construction would include the designations by individuals contemplated in your request, whether they are made on the individual's initiative or in response to the PAC's solicitation.

The Board does not agree with your contention that earmarking does not take place if the contributor does not specify a purpose for his contribution at the time the contribution is made. In order to meet its purposes of effectuating complete and accurate disclosure, the statute must be read to apply whether an act of earmarking takes place at the time the contribution is made or at a subsequent point in time.

Therefore the individual designations described in your request constitute acts of earmarking, regardless of whether such designations take place subsequent to the making of the individuals' transfers to the PAC. However, the Board has long recognized that an earmarked contribution may be transferred to a designated recipient through a "conduit" without violating s. 11.16 (4). The conduit transfers to the recipient the relevant identifying data concerning the earmarking contributor. In that way, the transfer of earmarked contributions does not conflict with the full disclosure purposes of the statute. See Ops. El.Bd. 74-1, 75-6, 76-3, and 76.15.

In the fact situation you describe, the PAC would be functioning in two roles: For contributions the purposes of which are designated by the individual contributors, the PAC would be a conduit of earmarked contributions. For contributions as to which no specific purpose is designated or as to which the contributor designates that the PAC choose a use, the PAC would act as an independent committee, contributing and disbursing in its own name, which activity subjects the PAC to registration and reporting requirements. Op.El.Bd. 74-13.

In order to ensure accurate disclosure, the PAC must treat the types of transactions described above separately on campaign finance reports. Each receipt of funds which have been or will be earmarked by the contributor must be specially designated as such at the time of receipt. Receipts and transfers of such funds may be shown on the report in the same schedules provided on the report form for other receipts and transfers, but they should be separately designated as "conduit" or "earmarked" transactions within the appropriate schedules. In reporting "cash balance," the total of earmarked funds in the depository should be specially designated and separated from the total of other funds. Finally, each PAC transfer of earmarked funds to a designated recipient must be accompanied by identification of the earmarking individual contributor.

Before closing, the Board notes that there is an alternative means by which your client could accomplish its apparent purposes. Two separate entities could be established, one to act as a registered fund, disbursing and contributing in its own name, and one to act as a conduit for the designated contributions of individual contributors. Op.El.Bd. 76-3. (Ops. El.Bd. 75-6 and 76-5 provide examples of Board-approved plans by which corporations may function as conduits for the earmarked contributions of employees.) If the two functions are separated in this way, the transactions of the conduit fund need not be reported by your client. Op.El.Bd. 74-1.